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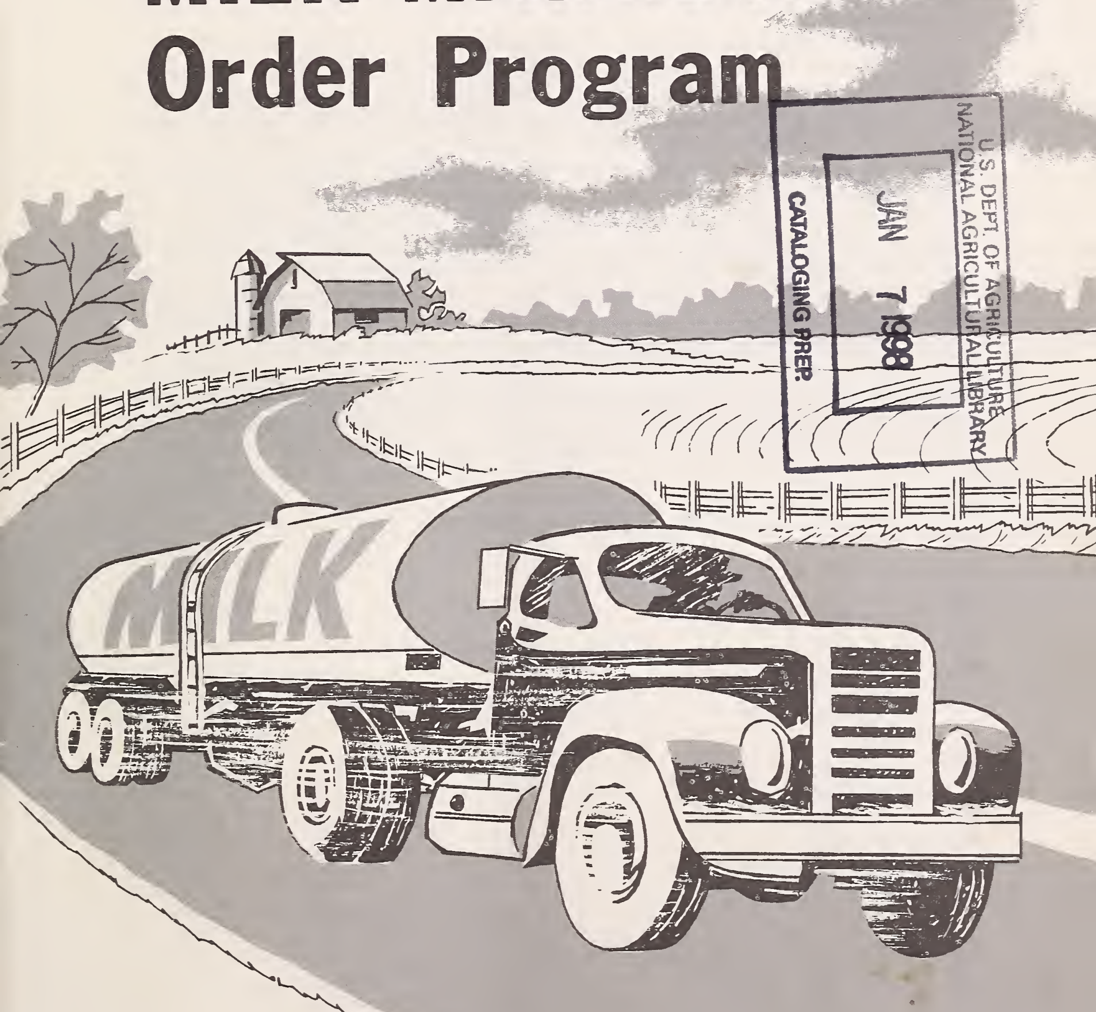
USDA

The Federal MILK MARKETING Order Program



Marketing Bulletin 27

UNITED STATES DEPARTMENT OF AGRICULTURE

CONSUMER AND MARKETING SERVICE

PREFACE

The Federal milk marketing order program has expanded rapidly in recent years. With its growth, a need has developed for more information about Federal milk orders. Effective application of the program depends upon free, full, and informed participation by all interested persons in the public proceedings which govern the orders.

This report is designed to help achieve that result. It was prompted by a request made jointly by the National Milk Producers Federation, the Milk Industry Foundation, and the Evaporated Milk Association for material which would provide a better understanding of Federal milk orders. Representatives of these associations met on several occasions with members of the Dairy Division, Consumer and Marketing Service (then the Agricultural Marketing Service), to discuss the questions most frequently asked about Federal milk orders. They suggested many of the subject headings for the report.

It was first published in October 1956 as Miscellaneous Publication No. 732 "Federal Milk Marketing Orders--Their Establishment, Terms and Operation." It was superseded by Marketing Bulletin 27, "The Federal Milk Marketing Order Program," issued in July 1963.

This second edition of Marketing Bulletin 27 makes only the changes essential to update milk marketing data, and to revise a few sections concerning provisions which have been changed since 1963 by Court decisions, new legislation or by administrative procedure.

Revised April 1968

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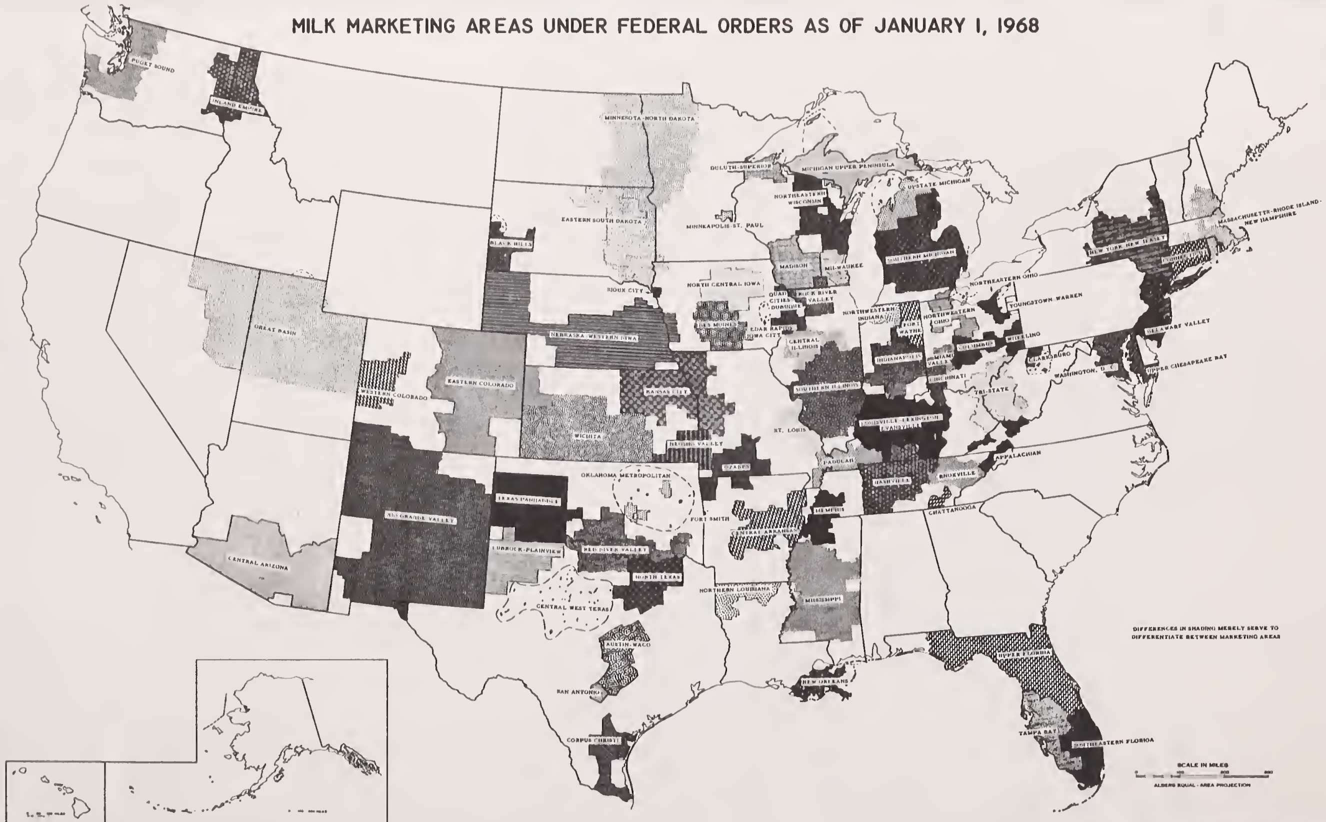
MILK MARKETING AREAS UNDER FEDERAL ORDERS AS OF JANUARY 1, 1968



U. S. DEPARTMENT OF AGRICULTURE

Neg. C&MS 256-68(2) CONSUMER AND MARKETING SERVICE

THE FEDERAL MILK MARKETING ORDER PROGRAM

by the

Dairy Division
Consumer and Marketing Service
United States Department of Agriculture

INTRODUCTION

Scope of the Milk Order Program

During 1967, about 141,000 farmers delivered milk to handlers regulated by 74 Federal milk marketing orders. These producers delivered 53.7 billion pounds of milk. The markets in which orders were operative varied from the metropolitan areas of New York-New Jersey to relatively small urban centers such as Sioux City, Iowa.

At the beginning of 1968 about 114 million Americans were getting their milk supply through handlers whose operations came under the 74 Federal milk marketing orders. The marketing order areas include most of the Nation's major population centers.

Program Benefits

The dairy farmer is assured of a reasonable minimum price for his milk throughout the year. This enables him to make long-range plans and justifies his heavy investment in equipment necessary to produce high-quality milk.

The program helps assure consumers of an adequate supply of milk to meet their needs throughout the year, and helps prevent wild fluctuations in price through periods of heavy and light milk production.

The dealer is assured his competitors pay for their milk at not less than the floor set by the order, and that all must conform to similar marketing practices. The dealer then can expect steady supplies of milk the year round, and can work toward building his distribution.

Development and Major Characteristics

The first steps in the development of a Federal milk order are usually taken by organized groups representing producers and by other members of the local fluid milk industry. After established procedures have been concluded, the Secretary of Agriculture may finally issue an order under authority of the Agricultural Marketing Agreement Act of 1937, as amended, 7 U.S.C. 601, and the Rules of Practice and Procedure, 7 CFR Part 900.

The Act specifies the terms a milk order may contain. Each order sets minimum prices which handlers must pay for milk purchased from producers or associations of producers. Since all markets have individual problems which affect both supply and sales conditions, consideration is given to the particular requirements of the individual markets. However, each order includes the essentials of a classified price plan, a system of minimum prices, and provisions for administering the order. Increasingly, provisions of the various orders must be coordinated.

A classified price plan provides different classes and prices for milk of different uses. Usually, milk used in fluid products is placed in Class I, the highest priced class. Milk used to produce butter, cheese, evaporated milk, and other manufactured products is placed in Class II or other lower priced classes.

Each milk order sets forth minimum prices for the various use-classes. Such prices are established for milk of 3.5 percent butterfat content, and adjustments are made for milk which has a butterfat test different from that specified. Since some markets get milk from wide areas, prices also are adjusted to reflect values at different locations.

The orders provide a uniform or average price, based on class values at minimum order prices. In some markets, it is computed for each handler, and all producers who sell milk to a particular handler are paid on the basis of the same uniform price. Such an arrangement is known as an individual handler pool. In other markets, milk orders provide marketwide pools, where class values are combined and averaged for all handlers in the market, and the uniform price reflects total usage by all handlers. Where there are marketwide pools, all producers in the market are paid the same uniform price per hundredweight.

Each milk order is administered by a market administrator, who is an agent of the Secretary of Agriculture. The administrator's principal duty is to assure that handlers account for their milk and pay producers in accordance with the provisions of the order. Handlers are required to make reports to the market administrator. He has a staff which makes investigations and audits handlers' records to determine that full required payments are made to producers.

PROCEDURES AND RESPONSIBILITIES

Federal milk orders define the terms under which handlers engaged in distribution of milk in specified marketing areas purchase milk from dairy farmers. They are legal instruments designed to promote orderly marketing conditions by effectuating a uniform system of classified pricing throughout the market. This assures consumers an ample supply of wholesome milk. Terms for the purchase of milk are spelled out in the order and are known in advance to both buyers and sellers, thus facilitating orderly marketing.

Orders have become increasingly important, but they serve only a limited function in the marketing of fluid milk. Federal milk orders do not control production, nor restrict the marketing

of milk by producers. They do not guarantee farmers a market with any buyer. Federal milk orders do not establish sanitary or quality standards. Sanitary regulations for milk sold in fluid markets are prescribed and administered by local and State health authorities. Federal milk orders do not guarantee a fixed level of price. They do not set retail prices, or price ceilings to producers. They do establish price floors for payments to producers consistent with local and general economic conditions affecting the supply of and demand for milk.

The terms of the order are developed through public participation in hearings held prior to the issuance of the order. Producers, handlers, and consumers may take part in these public hearings and present information and proposals regarding the need for an order and what its provisions should include. The responsibility of the Federal Government in the development of milk orders is to evaluate the various proposals, to resolve any differences in the public interest, and to enforce the orders after they are put into effect.

The responsibility of the U.S. Department of Agriculture in analyzing the complex problems which affect the public interest in the marketing of milk is carried out through public procedures provided by the Act. The public hearing is the means by which the interests of all persons may be considered. It offers an opportunity for minority as well as majority groups to bring their interests to the attention of the U.S. Department of Agriculture, and to show how they would be affected by any proposed marketing order or amendment.

The public procedures of the program also offer an opportunity for leaders in the dairy industry, for farmer organization leaders and for specialists from colleges and universities to have a hand in shaping Government decisions.

ECONOMIC AND LEGISLATIVE BACKGROUND

The Agricultural Marketing Agreement Act of 1937 and its predecessors, the Agricultural Adjustment Acts of 1935 and 1933, insofar as they relate to milk, grew out of the needs of milk producers for help in achieving and maintaining some degree of bargaining power over the prices they received for milk. The characteristics of milk contribute to producers' bargaining difficulties. It is bulky and perishable and must be moved promptly to market. Because milk is produced every day of the year, farmers must continue shipping it to market, even when market prices are not satisfactory.

It is necessary, also, to maintain specialized transportation systems to get the milk from farm to market. Frequently, these transportation systems are operated or arranged for by the milk dealers. Some farmers, therefore, do not always have freedom of choice as to the milk dealer to whom they will ship and sell. Under such circumstances, an individual farmer cannot bargain effectively.

Milk production varies widely with the seasons, and the demand varies from day to day. Because of its perishable nature, milk cannot be stored to balance the peaks and troughs of supply. The

industry, therefore, must continually produce an oversupply to make sure there will be enough milk at all times for the day to day needs of consumers. Milk which is not needed for fluid use is manufactured into dairy products. Milk utilized in manufactured products returns a lower price to producers than milk used for fluid purposes. Producers are, therefore, interested in getting a maximum proportion of their milk into the higher-valued fluid use, and in the absence of regulation, often make price concessions to achieve that end.

Cooperative Efforts

As early as 1910, producers in a number of markets had banded together into cooperative associations to gain bargaining power over prices for their milk. Impetus was given to the cooperative movement by the Clayton Act of 1914 and by the Capper-Volstead Act of the early 1920's, and producers concentrated on solving their problems together.

During the early years, the cooperative associations attempted to bargain with milk dealers, or handlers, for a flat price for all milk, regardless of use. However, the pressure of reserve supplies, normal to the fluid milk industry, led to a breakdown of the flat price plan. Some handlers refused to take this excess milk from producers at the flat price, because it had a lower value when converted to manufacturing uses. Handlers with excess milk tried to dispose of it by increasing consumer sales. Such handlers would offer fluid milk to all or some of their customers at prices lower than those of competitors. Then they would lower the flat price paid to producers.

In an effort to promote stability in milk markets, cooperatives next developed the "classified price system." This system was in effect in a number of the largest markets in the country by about 1920. Along with the classified price plan, various pooling arrangements were used.

These cooperative-sponsored price plans succeeded, or failed, according to the extent to which producers were able to organize the supply of milk under control of the cooperatives. General economic conditions were also influential factors. During the 1920's, industrial activity in the cities was at a high level; cooperatives attempted to have as members all of the producers in the market, and the voluntary plans of the cooperatives were relatively successful.

But there were advantages in remaining outside of these pricing arrangements. Some producers and handlers could not be persuaded to join in the marketwide programs. When the economic depression of the early 1930's struck, the voluntary plans failed to maintain satisfactory prices.

Federal Government Intervention

In the early 1930's, Congress authorized emergency aid programs for many segments of the economy. Such programs also were undertaken to assist milk producers. Under the Agricultural Adjustment Act of 1933, a program of licenses was developed.

All milk dealers in a given market were required to pay producers on a classified price basis, and to pool the returns to farmers either on a handler or marketwide basis. The Act of 1935 provided for marketing orders instead of licenses. The Agricultural Marketing Agreement Act of 1937 is largely a restatement of the provisions relating to marketing agreements and orders of the Act of 1935.

Court Review

Milk orders issued under the authority of the Agricultural Marketing Agreement Act have been reviewed by the courts many times. The constitutional authority for the Act and validity of the New York and Boston milk orders issued under its authority were upheld by the Supreme Court in the United States vs. Rock Royal Cooperative, Inc., 307 U.S. 533 and H. P. Hood and Sons vs. United States, 307 U.S. 588. The power of Congress to regulate the intrastate transactions which directly affect interstate commerce was confirmed by the Supreme Court in the United States vs. Wrightwood Dairy Co., 315 U.S. 110. Various aspects of individual milk orders have been subjected to review by the courts.[1]

Economic Conditions Shape the Program

Marketing conditions affecting milk used in fluid form and that used for the manufacture of dairy products are closely related in two fundamental ways. The first is that producers of manufacturing grade milk are potential sources of Grade A supplies. The margin of Grade A returns over the prices paid for manufacturing milk is a major inducement to producers to incur the added expense and care involved in Grade A production. The second relationship is that in fluid markets the milk not used for bottling must be manufactured into dairy products. The products manufactured from fluid grade milk are then part of the national market for dairy products and compete directly with products made from manufacturing grade milk.

In the early years of the Federal milk order program, economic conditions for all dairy farmers had been so unsatisfactory that the problem of improving prices for farmers overshadowed all other objectives. Although returns from milk production were low, production continued at previous levels, or was increased, while the demand for milk was declining.

[1] Dairymen's League Cooperative Association v. Brannan 173 F. 2d 57, certiorari denied; 338 U.S. 825; Grandview Dairy v. Jones, 157 F. 2d 5, certiorari denied; 329 U.S. 787; Shawangunk Cooperative Dairies v. Jones, 153 F. 2d 700; Waddington Milk Co. v. Wickard, 140 F. 2d 97; Queensboro Farm Products v. Wickard, 137 F. 2d 969; Titusville Dairy Products Co. v. Brannan, 176 F. 2d 332, certiorari denied; 338 U.S. 905; Bailey Farm Dairy Co. et al v. Anderson, 157 F. 2d 87; Wawa Dairy Farms, v. Wickard, 149 F. 2d 860; Grant et al v. Benson, 229 F. 2d 765, certiorari denied; Benson v. Schofield et al 236 F. 2d 719; Lehigh Valley Cooperative Farmers, Inc. et al v. U.S. 370 U.S. 76; Ideal Farms, Inc. et al v. Benson, 288 F. 2d 608; Newark Milk and Cream Co. v. Benson, 287 F. 2d 681; Minnesota ex rel. Miles Lord v. Benson, 274 F. 2d 764; Willow Farms Dairy, Inc., v. Benson, 276 F. 2d 856.

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The recession of the 1930's resulted in reduced consumer purchases and an accompanying upsurge in milk production. Emergency measures were taken by the Government to raise the prices of both fluid and manufacturing milk. Government officials knew that higher prices might intensify the surplus problem, but emergency conditions outweighed the function of price as a regulator of supply and demand. In 1933, Government purchases of surplus dairy products were begun to support the level of prices paid farmers for milk and butterfat. In 1938, when milk production increased 4 billion pounds over the previous year, Government purchases amounted to 3 billion pounds of whole milk equivalent.

In Federal order markets, it soon became evident that a program of increasing milk prices in any market already oversupplied with milk could not be continued indefinitely. By the early 1940's, increased attention was paid to long-run objectives. Attempts were made to establish price levels which would result in a reasonable adjustment of supply and sales in each market. However, the surpluses built up in some markets made it impossible from the standpoint of the welfare of thousands of dairy farmers to adjust prices quickly to a level that would bring the supply of milk in line with the demand for it.

Formula pricing of Class I (bottling) milk was introduced, and some changes in prices in line with changed economic conditions were accomplished by these early formulas. The rapidly changing pattern of the early 1940's, with the high level of industrial activity and rising price level, stimulated an interest in the development of a more automatic method of reflecting the supply-demand pricing standard set forth in the Act. Excess supplies disappeared quickly in the face of increasing wartime demands, and the problem soon became one of inducing sufficient production to satisfy market needs for milk.

Then came wartime measures to allocate the Nation's resources. Price ceilings were imposed in 1942, and in 1943 Government incentive payments were made to encourage milk production. Price was again stripped of its supply-demand function in order to prevent runaway inflation. During this period, Federal milk orders continued to function as marketwide pricing systems in a number of markets. The levels of class prices remained relatively constant and changed only as national price objectives were revised. Although price levels played a lesser role in the program, the classified pricing and other provisions of Federal milk orders continued useful for maintaining an effective system of marketing milk in about 30 markets.

After World War II, the supply of milk in the United States soon caught up with demand, and it became necessary again to support dairy product prices. In 1949, Government purchases of dairy products equalled 2-1/2 billion pounds of whole milk. The milk equivalent of purchases in 1950 amounted to more than 3-1/2 billion pounds. Then came the outbreak in Korea and the diversion of production resources to military uses. Milk supply and demand came into closer balance, but this proved only temporary. Beginning in late 1952, a substantial expansion in the annual volume of milk production became apparent. This expansion came

on partly because of economic conditions and partly as a result of technological developments. The impetus to production came at a time when demand for dairy products, particularly in terms of milk fat, was declining.

In 1953 and 1954 the milk production excess bought by the Federal Government totaled nearly 8.4 and 7.3 percent respectively of all milk produced in the United States. The balance between supply and sales improved in subsequent years and after a rather large surplus in 1961 and 1962, by 1966 only limited quantities were being offered to the Federal Government for purchase. Most of the product offered to the Federal Government was the solids-not-fat portion of milk.

It is not strange that Federal milk orders were requested in recent years by dairy farmers in many areas. In periods of heavy supplies of milk, there is a natural tendency for handlers to offer milk received in excess of their fluid sales at reduced prices to distributors in other markets. This tendency was accelerated by the remarkable improvement in transportation facilities and methods of handling milk. These improvements permit milk to be moved over long distances. Bulk milk shipments of more than fifteen hundred miles are made regularly from the upper Midwest to southeastern and southwestern markets, when milk supplies are short in those areas.

Paper packaged milk is also moving greater distances to markets. Paper packages require less transportation space, and since there is no return load, as with the glass bottle, the use of the paper package has made longer hauls feasible from a cost standpoint.

The technological problem of maintaining good quality, even on long hauls, has been solved. With the flexibility of milk supplies today and the prospect that milk will be even more mobile in the future, cut-price surplus milk tends to break the level of prices paid to all farmers. Moreover, with a general decline in the level of farm milk prices, these pressures are accentuated and producers tend to seek Federal milk orders as a means of enforcing uniform prices to all persons associated with a given market.

In 1949, there were 33 Federal milk orders in effect. Since then, through January 1, 1967, an additional 71 new orders have been issued. The number of orders on January 1, 1967, however, was only 73 as many mergers of orders had taken place.

In 1966, about 50 percent of all milk sold in the United States to plants and dealers was regulated by Federal milk orders.

PROCEDURES FOR DEVELOPING AND ISSUING FEDERAL MILK ORDERS

Government and Industry Roles

The Agricultural Marketing Agreement Act of 1937, as amended, authorizes Federal milk orders and defines the role of Government in carrying out procedures for their development and issuance. The U.S. Department of Agriculture is responsible for judging

the merits of proposals made at public hearings. In accordance with standards prescribed in the Act, it must resolve the problems presented and administer the orders after they are issued. The U.S. District Courts are vested with the authority to enforce the orders.

The procedures under which Federal milk orders are established require that persons directly concerned with the program take the initiative in the development of an order. Since the purpose of a milk order is to provide dairy farmers with a marketing plan under government supervision, and since the issuance of an order requires approval by the farmers affected, farmers commonly take the first steps in proposing an order. There is no suggestion in the Agricultural Marketing Agreement Act that milk orders be made available only to markets in which producers are organized. However, objectives and machinery of the program are such that the orderly and systematic representation of producers in a marketing cooperative is almost essential for the establishment and effective operation of a marketing order.

Handlers are encouraged to take as active a part as they can in promulgation and amendment proceedings. They have direct knowledge of many competitive conditions in the market that individual producers or cooperative associations are not in a position to know. Active participation by handlers enables USDA to develop an order better suited to local conditions than it would be without such participation.

Conditions Indicative of Need for an Order

The declared purpose of the Agricultural Marketing Agreement Act is "to establish and maintain such orderly marketing conditions"..."as will establish"...(prices which) "are reasonable in view of the price of feeds, the available supplies of feeds, and other economic conditions," (and which will) "insure a sufficient quantity of pure and wholesome milk, and be in the public interest."

The Act contains special provisions with respect to milk. They authorize the system of classifying milk in accordance with use, and establishing minimum prices for milk used in such classes. This classified price system was developed first by cooperative associations. The application of the system of classified prices to an entire fluid milk market is the primary means of achieving orderly marketing conditions. The absence of a fully effective system of classified pricing is therefore an important element in the need for a Federal order.

A cooperative association may negotiate a system of classified pricing with some of the handlers in an unregulated market. However, other handlers may undermine the cooperative's bargaining position by temporarily offering unorganized producers a flat price above the blend or average price paid cooperative members under the negotiated classified pricing plan. This encourages members to leave the cooperative and dissuades nonmembers from joining. Organized producers lose bargaining strength, and eventually the position of all producers in the market is weakened.

TABLE 1.--Milk deliveries, by State of origin, to handlers regulated under Federal milk orders, 1965-1966

State and region	Deliveries to Federal order plants: Total[1] 1965[3]	1966	Percentage of milk delivered to all plants[2] 1965	1966
	Million pounds		Percent	
Maine	240	177	39.7	30.0
New Hampshire	208	220	57.0	62.0
Vermont	1,702	1,575	85.7	83.1
Massachusetts	624	626	89.1	94.1
Rhode Island	93	84	98.9	96.6
Connecticut	656	648	100.0	100.0
New England	3,523	3,330	80.1	78.6
New York	8,993	8,716	84.8	85.7
New Jersey	932	865	95.1	91.1
Pennsylvania	4,606	4,653	68.1	69.9
Middle Atlantic	14,531	14,234	79.2	80.1
Delaware	123	106	82.6	74.6
Maryland	1,397	1,368	93.1	91.8
Virginia	590	589	38.1	38.2
West Virginia	279	267	75.4	73.2
North Carolina	1	1	.1	.1
South Carolina	0	0	0	0
Georgia	39	41	4.4	4.5
Florida	530	910	39.7	65.5
South Atlantic	2,959	3,282	39.6	43.4
Ohio	3,784	3,683	76.8	78.7
Indiana	2,067	2,069	73.3	78.2
Illinois	2,093	1,803	57.0	52.4
Michigan	4,298	4,035	82.0	82.1
Wisconsin	6,860	5,709	37.9	32.6
East North Central	19,102	17,299	55.0	52.2
Minnesota	710	730	7.2	7.8
Iowa	1,052	1,046	21.3	22.0
Missouri	1,159	1,200	39.8	42.6
North Dakota	4	0	.8	0
South Dakota	194	203	16.9	17.8
Nebraska	457	454	39.4	38.5
Kansas	887	974	62.9	69.6
West North Central	4,463	4,607	20.3	21.7
Kentucky	1,097	1,149	48.6	49.8
Tennessee	1,017	1,038	52.7	53.2
Alabama	3	4	.4	.6
Mississippi	561	663	57.2	68.7
East South Central	2,678	2,854	45.8	48.3
Arkansas	319	334	51.5	54.3
Louisiana	529	537	59.4	59.0
Oklahoma	926	943	81.9	82.7
Texas	2,053	2,312	74.7	82.3
West South Central	3,827	4,126	71.0	75.4
Montana	0	(4)	0	(5)
Idaho	75	63	5.6	4.8
Wyoming	12	23	9.5	18.5
Colorado	645	664	92.1	94.9
New Mexico	253	236	100.0	94.4
Arizona	489	484	100.0	97.4
Utah	443	420	67.6	64.1
Nevada	3	3	2.4	2.4
Mountain	1,920	1,893	48.8	48.6
Washington	1,414	1,428	80.8	80.5
Oregon	0	0	0	0
California	27	50	.3	.6
Pacific	1,441	1,478	13.8	13.9
Alaska & Hawaii	0	0	0	0
Total (U.S.)	54,444	53,103	48.3	48.3

[1] Total deliveries of milk by producers in each State to handlers regulated under Federal milk orders.
[2] Computed from data contained in "Milk Production, Disposition, and Income," 1965-66.
[3] Revised.
[4] Less than 500 thousand pounds.
[5] Less than one-tenth of one percent.

A general weakness of producers' bargaining position often results in prices generally lower than those paid in surrounding markets. In time, such depressed prices may drive enough producers from the market to threaten a shortage of fluid milk.

Unequal bargaining strength between producer groups may indicate general weakness in the bargaining position of all producers in the market. Often price concessions won by handlers in bargaining with one producer group are used as a lever to lower the prices paid another group.

The refusal of some handlers to accept all or part of the milk offered by producers who have been their normal suppliers may stem from a lack of coordinated bargaining by producers. This is demonstrated when a handler substitutes a supply from sources which, under equal bargaining conditions, would be no more economical for him.

Handlers may sometimes use special premiums or deductions to discriminate between producers. Sometimes they do not try to conceal the fact that different producers get different prices for the same grade of milk.

In the marketing system for fluid milk, payments are normally prearranged, but not until several weeks after producers have made deliveries. Thus, confidence of buyers and sellers is essential to the smooth functioning of such a system. Lack of information about the market, and absence of an impartial agency to appraise buying practices used, may leave a void in which mistrust in the marketing system leads to practices which disrupt orderly marketing.

None of the conditions cited should be regarded as a "prima facie" indication of the need for an order. The extent to which the different conditions disrupt the orderly marketing of milk varies, and the conditions themselves vary in degree.

Findings Relative to Interstate Commerce in Milk

The Agricultural Marketing Agreement Act specifies that orders "shall regulate, in the manner...provided, only such handling of...(milk)..., or product thereof, as in the current of interstate or foreign commerce, or which directly burdens, obstructs, or affects, interstate or foreign commerce in such commodity or product thereof." The price competition between milk moved in interstate commerce and intrastate milk supplies has been held to burden interstate commerce sufficiently to warrant Federal regulation.

The extent to which the handling must affect interstate commerce to support an order is not, according to the Supreme Court of the United States, "a technical legal conception but a practical one, drawn from the course of business." Interstate commerce in milk has expanded in recent years. Technological developments affecting the milk industry of the Nation have broadened marketing areas for milk, and the products of milk are generally distributed in a nationwide market.

The interstate character of commerce in milk and dairy products is described in the following excerpt from a decision of

the Secretary of Agriculture with respect to the Paducah, Kentucky, milk order on December 17, 1947:

"The close interrelationship of prices between milk for fluid distribution and milk for manufactured purposes indicates that the interchangeability of supplies of milk for fluid distribution and of milk for manufacturing purposes is such that prices of milk for fluid distribution in any given area are subject, in a considerable degree, to the same supply and demand forces on a regional and on a national scale as are prices for milk for manufacturing uses. . .

"The fluid milk price in any given market will influence the prices in other distant markets and the price of milk used in manufactured dairy products flowing across State lines. In periods of surplus production there is a greater incentive for destructive producer price competition. In an unstabilized market where returns to producers are not based upon proportionate sharing of the fluid milk sales under a classified price plan, there is a tendency, created by the pressure of producers, to have a share of the higher priced or fluid market, for the market price to be reduced below the point justified by the existing supply and demand situation in the fluid market. With a declining price in the fluid market, in such instances, there results an adverse effect on the market of other manufactured products, which effect is spread through a series of price repercussions effecting a decline of prices at other outlets for milk in all its various uses, including other fluid milk. It does not matter that the initial movement in this direction occurs in a market receiving its total supply within a single State. A slump in the price of milk in any sizable market tends to encourage producers to transfer their milk to available facilities for manufactured milk products, which transfer results in an increased amount of dairy products being manufactured locally."

Pre-hearing Procedures

The General Regulations of USDA prescribe the pre-hearing procedures. A marketing agreement or a marketing order may be proposed by the Secretary or by any other person. If any person other than the Secretary proposes a marketing agreement or marketing order, he shall file a written application, and at least four copies of the proposal, requesting the Secretary to hold a hearing upon the proposal. Upon receipt of such a proposal, USDA makes an investigation. If it shows that the proposed marketing agreement or marketing order will not tend to effectuate the declared policy of the Act, or that for other proper reasons a hearing should not be held on the proposal, the application is denied and the applicant promptly notified. The notice is accompanied by a brief statement of the grounds for the denial.

If USDA concludes that the proposed marketing agreement or marketing order will tend to effectuate the declared policy of the Act, or if the Secretary desires to propose a marketing agreement or marketing order, a notice of hearing is issued.

Usually, a proposal for a hearing on a new order is made by a farmer cooperative association representing producers who supply

milk to the marketing area for which the regulation is sought. Such a proposal is referred to the Dairy Division of the Consumer and Marketing Service. The Division is responsible for investigating each hearing proposal and recommending that a hearing on the proposal be called or denied.

At the time the petitioner for a hearing supplies the full text of a proposed order on which a hearing is requested, the proposal is usually considered an active program in the Dairy Division, and one or more marketing specialists in the Division are assigned to study the proposal and the marketing conditions in the proposed area.

Before a proposed milk order is drafted, its proponents usually hold many discussions and conferences with other groups in the local areas where an order is contemplated. The purposes and mechanics of a Federal milk order are explained. The producer group which is interested in improving its marketing system by developing a Federal milk order usually leads in arranging such meetings to acquaint others in the area with their program.

County agricultural agents often assist the producer association by explaining the general purposes of the Federal milk order program and how it operates.

For larger meetings, a specialist in dairy marketing is sometimes called from the Federal Extension Service to assist in this educational phase of the program development. Specialists in the Dairy Division help prepare material about the Federal milk order program, and in some cases, attend meetings to explain the purposes and operations of Federal milk orders.

The Dairy Division always advises milk handlers and other interested persons when a proposal for an order has been filed and a hearing is being considered. At the same time, the Division invites additional proposals which may be included in a hearing notice if one is issued. Conferences often are held by Division staff members with handler and producer representatives to discuss a marketing problem before planning a hearing. Such conferences often include representatives from several markets when mutual marketing problems arise.

Such other proposals, and the order as proposed by the original proponents, are studied by Division specialists. If it appears from the inquiry that a proposed order is feasible and that proponents are prepared to go to a hearing and present evidence on the need for an order, the Director of the Dairy Division recommends that a hearing notice be issued. In no event, however, does the prehearing study resolve any of the questions which are to be determined from the evidence introduced at the hearing.

The inquiry prior to the recommendation of a hearing on a proposed new order must establish that:

1. Marketing conditions in the area are susceptible to improvement by the issuance of a milk order.
2. Evidence pertinent to the consideration of a milk order will be forthcoming at the hearing.
3. The proponents of the order appear to have the support of a substantial number of producers in the market.
4. Marketing of milk in the area affects interstate commerce.

The exact nature and extent of the pre-hearing study varies with individual circumstances. During the course of any investigation, the marketing specialist consults with handler and producer groups and makes himself available for consultation upon request of any interested persons. Sometimes the need for a hearing may be obvious, and in other cases the market disturbance may be less evident on the surface. The need for practical and economical administration of the program requires that sufficient preliminary study be made to warrant the expenditure of time and money by government and industry which a public hearing requires. Proposals which obviously would not tend to carry out the policy of the statute are not included in the hearing notice. If a hearing is requested for a market in which an order has previously been in effect, or in which a hearing on a proposed order has previously been held, it must be established that new evidence is available.

The formal notice of the hearing on the consideration of a new order must be published in the Federal Register at least 15 days before a hearing. In practice, a longer period is usually allowed. The official notice gives the time and place at which the hearing will be held and contains the proposals to be considered.

These pre-hearing activities relate to the procedures followed before a hearing on a proposed order for a new area. The procedures are similar, in most respects, for hearings on proposed amendments to an established order, but there are a few differences. Only 3 days notice of the hearing is required on certain types of proposed amendments. Whereas a proposed order for a new area is normally sponsored by a producer group, proposed amendments are often sponsored by handlers. If the proposed amendment relates only to a few issues, the pre-hearing procedures may be simple. If the amendment proposed is complex, the preliminary investigation may be extensive as in the case of a new order proposal.

The Public Hearing

The public hearing is held to receive evidence with respect to economic and marketing conditions which relate to the handling of milk in the marketing area for which a Federal milk order is proposed. The hearing notice contains proposed provisions of an order. Evidence at the hearing, however, is not restricted to the terms of the specific proposals in the hearing notice. At the hearing, evidence is received relative to all aspects of the marketing conditions which are referred to in the proposals.

It is the general policy of USDA to hold its public hearings in the market for which the order is proposed. The hearing is conducted by a hearing examiner. There are currently five hearing examiners in the U.S. Department of Agriculture. These hearing examiners can be removed only for cause, and their office operates as a separate unit within USDA.

The hearing examiner presides over the hearing in much the same way as the chairman of any meeting. He determines the order in which witnesses are to appear at the hearing and rules on any questions which may arise. If an objection to the hearing

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examiner's ruling is made, the objector may argue in his brief for the Secretary to reverse the ruling of the hearing examiner.

All the testimony at the public hearing is taken under oath or by affirmation and is reported verbatim. Any interested person who desires to testify is given an opportunity to be heard on matters relevant and material to the issues under consideration. Questioning of witnesses is permitted to clarify facts in their testimony. Experience indicates, however, that, in most instances, an interested person can better develop his own case by presenting a direct statement than by cross examination of another witness. Furthermore, witnesses may refuse to answer questions. While their testimony is strictly voluntary, their refusal to answer questions may affect the weight to be given their statements.

At the close of the hearing, the hearing examiner sets a time period within which written briefs may be filed by interested persons. The briefs must refer to evidence presented at the public hearing and may offer no new facts for consideration. After the hearing, the examiner scrutinizes the verbatim record for accuracy of content and then certifies it as a true and correct record. The record is then turned over to the Dairy Division for study and preparation of a recommendation on the issues.

A marketing specialist who is familiar with the marketing conditions in the particular area and the operation of milk orders under various conditions is assigned by the Dairy Division to each public hearing. Since the hearing record certified by the hearing examiner is the source of information upon which the Dairy Division must make a recommendation on the issue, it is imperative that each record be as complete and as clear as possible with respect to the relevant facts. Except for official notice which may be taken of facts contained in official documents, the public hearing record is the sole source of information upon which the issues may be appraised. But official notice is limited. For example, official notice may be taken of the provisions in another Federal milk order, but not of the marketing conditions in the other area which called for such provisions. The marketing specialist is responsible for getting in the record as much relevant information as is possible. He follows the testimony of the witnesses carefully to note any omission of information which may be pertinent to the consideration of the issue, and to attempt to elicit such information or to clarify the testimony when it is apt to be confusing upon review at a later date. He directs the preparation of statistical exhibits and other pertinent data which are readily available to the Department of Agriculture and introduces such material in the hearing record. It is the responsibility of the marketing specialist to be sure that complete data upon which to make a decision are available to USDA in the record. In a few cases where expert testimony of a special type may be needed, a marketing specialist is sometimes assigned to testify concerning order provisions. Such assignments are limited to factual testimony concerning a provision, and the specialist does not appear as an advocate or opponent.

An attorney from USDA's Office of the General Counsel is usually assigned to each hearing and shares with the marketing specialist the responsibility for eliciting information for the record. He

also represents USDA on questions of a legal nature which may arise at the hearing.

The principal participants at the hearings are representatives of producers, handlers, and consumers who appear as witnesses. Based on their technical knowledge of the market, handlers and producers present evidence of marketing conditions in the area.

Consumers, who may appear as individuals or as representatives of consumer groups, present the viewpoint of the consumer.

The data necessary to evaluate the terms of a proposed milk order include a broad field of information. Evidence which is considered pertinent to the consideration of a milk order relates to marketing, price and bargaining problems, interstate commerce, marketing institutions, the character of the marketing area, classified pricing systems in effect in the marketing area, health requirements applicable to milk and its products, transportation systems, pooling, and all other factors affecting supply and demand conditions. Information needed by the U.S. Department of Agriculture for consideration of a proposed Federal milk order is outlined in more detail on pages 45-48.

The Recommended Decision

Since the marketing of milk is complex, the regulation must be drafted to accomplish the purposes of Federal milk orders under many diverse situations. To afford dairy farmers, milk dealers, and the general public every opportunity to appraise the effect of a proposed milk order, a tentative order is issued by USDA after analysis of the evidence introduced at the public hearing. The length of time ensuing between the close of the hearing and the issuance of the recommended decision and proposed order varies considerably, depending on the complexity of the issues involved. Interested persons are given an opportunity to consider the proposed order and then file written exception to the findings, conclusions and provisions of the recommended order.

The General Regulations of USDA require the issuance of such a recommended decision and specify its contents as follows:

(1) A preliminary statement containing a description of the history of the proceedings, a brief explanation of the material issues of fact, law or discretion presented on the record, and proposed findings and conclusions with respect to such issues as well as the reasons or basis therefor; (2) a ruling upon each proposed finding or conclusion submitted by interested persons; and (3) an appropriate proposed marketing agreement or marketing order.

The recommended decision is mailed to everyone known to be interested and is also published in the Federal Register. The decision specifies the period of time within which written exceptions may be filed by interested persons. In emergency situations, where time does not permit the issuance of a recommended decision, the regulations provide that this step in the procedure may be omitted. The emergency omission of a recommended decision applies in practice only to amendments, not to new orders.

The recommended decision is prepared by marketing specialists in the Dairy Division, after careful study of the record and appraisal of the issues. When the decision has been reviewed and approved within the Dairy Division and by the Office of the General Counsel for legal sufficiency, it is transmitted to the Administrator of the Consumer and Marketing Service for review and, if approved, issuance.

Written exceptions filed by interested persons must be based on the facts contained in the hearing record. The exceptions provide the opportunity for a review of USDA's conclusions based on judgments formed by interested persons. After exceptions are filed, marketing specialists in the Dairy Division reexamine the findings and conclusions contained in the recommended decision. Then, they draft a final decision and transmit it to the Secretary for his review, approval, and issuance.

The Final Decision

The final decision must be made on the basis of standards in the statute as interpreted by the U.S. Department of Agriculture. The decision includes a statement of USDA's findings and conclusions and the complete text of the proposed order. It sets forth the reasons for accepting or denying proposals advanced at the hearing and includes rulings on exceptions to the recommended decision. The provisions of the order contained in the final decision represent the final proposals of the Department and are the proposals presented to producers for their approval.

The Marketing Agreement Act requires also that handlers be given an opportunity to sign a marketing agreement which contains terms and provisions similar to those in an order. Such an agreement is also contained in the final decision. In the past, handlers have usually failed to sign these marketing agreements. The order may be made effective without the agreement, however, if the Secretary determines that failure of handlers to sign the agreement obstructs the effectuation of the purposes of the Act and that issuance of the order is the only means of advancing the interest of producers.

Producer Approval

Producers must approve an order before it is issued. Producer approval may be determined by a referendum, in which case the requirements of producer approval apply to the number of eligible producers voting in a referendum. The referendum is conducted by an agent of the Secretary of Agriculture. Balloting is now usually by mail in a referendum on a proposed new order or on proposed amendments. In earlier years of the program, ballots on proposed new orders were usually cast personally by those voting at a polling place.

Orders which provide for marketwide pools must be approved by two-thirds of voting producers who supplied the market during a designated representative period, or by producers who supplied two-thirds of the milk sold in the defined marketing area during

that period. If the order establishes an individual handler pool, it must be approved by three-fourths of the eligible voting producers or by producers who supplied three-fourths of the milk.

Producers may vote individually or through cooperative associations. The Agricultural Marketing Agreement Act contains the express requirement that the vote of an approved bona fide cooperative association, if the association requests, must be accepted by the Secretary as representative of all members of the association who are eligible to vote on a prospective order. In the voting on Class I base plan provisions (as presently authorized) producers must vote individually; and the rejection of a Class I base plan by producers does not affect the other provisions of an order.

The determination of the cooperative's eligibility to participate is made by the Director of the Dairy Division. This determination is based upon information contained in an application filed by the cooperative, including evidence that such cooperative qualifies under the terms of the Capper-Volstead Act. The cooperative, to be eligible, must also be controlled by its members and must be engaged in marketing members' milk.

A producer's eligibility to vote is determined by his affiliation with the market during a representative period. This is usually the latest delivery period for which the necessary records of producer deliveries and plant utilization are available.

A proposed order may be in the form of a complete order for a new market, an amendment to an existing order, or a complete revision of an existing order. In each case, other than base plans, approval of the entire order, as amended, is required. The requirement for approval of the entire order, in terms approved by the Secretary of Agriculture, prohibits producers from selecting only the provisions they desire and assures the public that any such order contains only provisions which are in the public interest.

The wide acceptance of the milk order program is based in large part on the knowledge that the decisions of the Secretary are based on facts presented in an open public hearing, are impartial, and are in the public interest.

Also, the pertinent issues are discussed in the decisions and allow interested persons full knowledge of the reasons for the decision. No discussion of the issues in the decision by USDA officials is allowed until after it is issued.

The Order or Amended Order

If the order or amended order is approved by the requisite number of producers, the Secretary issues the order and directs the handlers which it regulates to market milk in conformity to and in compliance with the terms and provisions of the order.

In the case of new orders, the pricing provisions are usually made effective after the handlers have been given time, usually one month, to observe the record keeping provisions of the order in action.

The order thus promulgated remains in effect until an amendment or amended order has been developed through the same procedures. However, in emergency situations, the order, or

certain terms and provisions it contains, may be suspended or terminated.

Suspension or Termination

Suspension orders deleting particular provisions may be issued without following the usual procedures involved in amendment actions. However, these procedures were established to assure that USDA is advised of all aspects of a proposed change. Thus, they are abrogated only when there is imperative and unequivocal need for emergency action and time will not permit the more lengthy requirements of an amendment.

The Secretary terminates an order or provisions of an order if he finds they no longer accomplish the purposes of the Act. An order must be terminated at the request of a majority of producers who produce more than half of the milk supply for a market.

Review of Orders or Provisions of Orders

The Act authorizes a handler to challenge before the Secretary of Agriculture an order, or any provision thereof, "or any obligation imposed in connection therewith" as "not in accordance with law," and to ask to have it modified or to be exempted from it. When the order is so challenged, the determination of the Secretary of Agriculture, after a hearing, is final if in accordance with law. To test whether such ruling is "in accordance with law" the handler may bring the Secretary's action for review before the appropriate Federal District Court. But the very section which gives the handler access to the Secretary of Agriculture for administrative relief and opportunity for review of his determination provides that proceedings pending on such petition "shall not impede, hinder or delay the United States or the Secretary of Agriculture from obtaining relief" under Section 8a(6) of the Act. That section vests the district courts with jurisdiction to restrain violations and specifically to enforce orders.

The sections of the statute which establish the procedure for review are:

> "8c (15) (A). Any handler subject to an order may file a written petition with the Secretary of Agriculture, stating that such order or any provision of any such order or any obligation imposed in connection therewith is not in accordance with law and praying for a modification thereof or to be exempted therefrom. He shall thereupon be given an opportunity for a hearing upon such petition, in accordance with regulations made by the Secretary of Agriculture, with the approval of the President. After such hearing, the Secretary shall make a ruling upon the prayer of such petition which shall be final, if in accordance with law."
>
> "8c (15) (B). The District Courts of the United States (including the District Court of the United States for the District of Columbia) in any district in which such handler is an

inhabitant, or has his principal place of business, are hereby vested with jurisdiction in equity to review such ruling, provided a bill in equity for that purpose is filed within twenty days from the date of the entry of such ruling. Service of process in such proceedings may be had upon the Secretary by delivering to him a copy of the bill of complaint. If the court determines that such ruling is not in accordance with law, it shall remand such proceedings to the Secretary with directions either (1) to make such ruling as the court shall determine to be in accordance with law, or (2) to take such further proceedings as, in its opinion, the law requires. The pendency of proceedings instituted pursuant to this subsection (15) shall not impede, hinder, or delay the United States or the Secretary of Agriculture from obtaining relief pursuant to section 8a (6) of this title (except where brought by way of counterclaim in proceedings instituted pursuant to this subsection (15)) shall abate whenever a final decree has been rendered in proceedings between the same parties, and covering the same subject matter, instituted pursuant to this subsection (15)."

The Supreme Court of the United States held in United States vs. Ruzicka, 329 U.S. 287, that these sections of the Act provide the exclusive means whereby an order provision or obligation thereunder can be tested. In other words, a handler must pursue his administrative remedy according to the procedures established in the Act since the Act provides for a hearing and decision by the Secretary of Agriculture prior to review of the issue in the district court. The handler may not take his case directly to the courts, nor can he challenge the legality of an order provision or an obligation imposed upon him in an enforcement action. In the opinion of the Court, the reason for this requirement is described:

"The situation before us indicates how disruptive it would be to allow issues that may properly come before a district court in a proceeding under Section § 8c (15) to be open for independent adjudication in a suit for enforcement under Section § 8a (6). After a presumably careful study by those technically equipped, a program was devised for the dairy farmers in one of the large areas of the country. The success of the operation of such Congressionally authorized milk control must depend on the efficiency of its administration. Promptness of compliance by those subject to the scheme is the presupposition of Order No. 41. Thus, definite monthly deadlines are fixed by the order for every step in the program. In large measure, the success of this scheme revolves around a 'producers' fund which is solvent and to which all contribute in accordance with a formula equitably determined and of uniform applicability. Failure by handlers to meet their obligations promptly would threaten the whole scheme. Even temporary defaults by some handlers may work unfairness to others, encourage wider noncompliance, and engender those subtle forces of doubt and distrust which so readily dislocate delicate economic arrangements. To make the vitality of the whole arrangement depend on the contingencies and inevitable delays of litigation, no matter how alertly pursued, is not a result to be attributed to Congress, unless support for it is much more manifest than we here find. That Congress

avoided such hazards for its policy is persuasively indicated by the procedure it devised for the careful administrative and judicial consideration of a handler's grievance. It thereby safeguarded individual as well as collective interests. In the case before us, administrative proceedings were instituted before the Secretary of Agriculture and, apparently, are awaiting his action. Presumably the Secretary of Agriculture will give the respondents the rights to which Congress said they were entitled. If they are dissatisfied with his ruling, they may question it in a district court. The interests of the entire industry need not be disturbed in order to do justice to an individual case."

PRINCIPAL PROVISIONS OF A FEDERAL MILK ORDER

Since milk orders are legal instruments which obligate handlers to pay minimum class prices for milk purchased from farmers, they must be detailed and explicit. There are about a hundred separate provisions in most milk orders which define those who are obligated under the order and the exact terms of the obligation.

Marketing Area

The definition of the marketing area is the first important term of an order. The regulation of a milk order applies to the purchase of milk produced for sale in a designated marketing area. For example, the Madison, Wisconsin, marketing area includes the surrounding counties of Columbia, Crawford, Dane, Grant, Green, Iowa, Juneau, La Crosse, Lafayette, Monroe, Richland, Sauk, and Vernon. The North Texas marketing area includes the cities of Dallas and Fort Worth, and extends to smaller cities and towns in an area about 125 miles from the northern to the southern boundary and about the same distance east and west.

The marketing area is designed to include all of an area where the same milk dealers compete with each other for sales of milk, and where such milk must meet essentially the same sanitary inspection standards. Since only handlers doing business within the defined area must pay the minimum prices, it is important to draw the boundary line at points where there are relatively few route sales moving across the boundary. This objective has become increasingly difficult to attain in recent years, as the fluid milk distribution business has expanded over wider areas, with considerable overlapping of delivery routes. Improved refrigeration and transportation and paper packaging of milk have encouraged this expansion of sales areas.

The problem of defining the marketing area is interwoven with the problem of whether an area should be regulated by one or two orders. The degree of relationship between markets determines whether the area is regulated by one order or a series of orders. But there is not too much difference in the operation of a combined market program or two separate orders with major provisions closely related.

There are many instances in which handlers are distributing milk in more than one marketing area from the same plant. A decision must be reached in such cases as to which order shall apply. Most orders provide that a handler shall be regulated by the order for the marketing area where he has the greatest Class I sales.

In many instances where handlers' routes overlapped in two markets in which supply conditions and health department requirements were similar, the separate orders have been combined. Since the merger of the South Bend and La Porte, Indiana, markets in 1947, many additional mergers have been made.

Handler

In the orders, a "handler" is defined in some detail. The definition commonly covers individuals, partnerships or corporations. In general, a handler is a person who buys milk from farmers which is delivered to a city plant, or who purchases milk at a country receiving plant and transfers it to the city for sale in fluid products. The term handler applies to proprietary handlers and also includes cooperative associations of producers where such associations handle the milk of their members.

If all handlers did business in the same way and if the marketing area boundary could be drawn at the exact point where sales routes end, the definition of a handler and the application of order regulation would be relatively simple. All handlers would be completely regulated and pay the minimum established prices for milk bought from farmers.

The handling of milk for fluid markets, however, does not fit one mold, and the regulation, if it is not to stifle normal economic development, must recognize the characteristics of the industry. With the large interchange of milk between markets, it has become increasingly important to develop a plan of partial regulation for handlers who do only a small part of their business in a particular marketing area. The handlers now are defined as either (1) fully regulated; (2) partially regulated; or (3) exempt. These handlers are usually defined in terms of the volume or percentage of their receipts disposed of in the area as Class I milk.

Handlers who make a substantial proportion of their fluid sales in the defined marketing area are fully regulated. Partially regulated handlers are those with only small fluid disposition in the regulated sales area. Usually, their principal business is the production and sale of manufactured products, or fluid sales in unregulated areas. Exempt handlers may be small operators, such as producer-handlers or handlers who operate only one route in the area.

Fully regulated handlers sometimes receive some bulk milk which is partially regulated. When such milk is disposed of in the area by a fully regulated handler, the reports and any charges which may be required on such milk are made by the fully regulated handler.

Producer

A producer, as defined in most orders, is a dairy farmer who delivers milk approved for sale as fluid whole milk in the regulated market to a fully regulated handler.

Classified Pricing

An order establishes prices by classes according to the use of milk. Because milk is perishable and is subject to contamination, there is extra cost of sanitary control on the farm, such as the expense of refrigeration and necessity of frequent delivery. Because it is bulky, there is a high cost involved in hauling it to market. This makes milk for fluid purposes cost more than milk for manufacturing purposes, and a higher price must be paid to encourage its production. Also, sales of fluid milk are fairly even the year round, while production is seasonally higher in the spring than in the fall. When producers deliver enough milk in the fall to meet fluid consumption, they generally deliver more than is needed for fluid uses in the spring months. The milk used for fluid consumption is priced separately under a marketing order at one level, and the remainder is priced at a lower level in line with the value of the manufactured dairy products made from such milk.

Most of the 73 milk marketing orders in effect in January 1967, established only two use classifications (1) Class I, the primary fluid use and (2) Class II, milk used in all other products including mainly manufactured dairy products such as butter, cheese, and ice cream. Class I fluid uses generally include bottled products such as whole milk, flavored milk drinks, buttermilk, concentrated milk and other fluid milk products which must be produced from milk approved by local health authorities. In most markets, fluid use also includes sweet and sour cream sold for consumption as cream, instead of for processing into other products.

Freight is an important factor in determining the classification of milk in various products. The higher freight cost incidental to transporting the more bulky dairy products is the principal contributor to the higher value of such products in markets involving large metropolitan centers where milk must be shipped long distances each day. Hauling costs also affect milk and dairy product prices in markets more distant from the areas of the country where milk production is heaviest and where a large proportion of the milk supply is used for manufactured dairy products.

Levels of Class Prices

The policy to be followed in pricing milk under Federal milk orders was established by the Congress and is stated in the Agricultural Marketing Agreement Act. The Act directs the Secretary of Agriculture to establish milk prices which are in the public interest, which reflect certain economic factors, and which assure a sufficient quantity of pure and wholesome milk.

TABLE 2.--Average of minimum prices, 66 Federal milk orders, 3.5 percent butterfat content [1]

Year and month	Class I	Blend	Year and month	Class I	Blend
	Dol. per 100 lb.			Dol. per 100 lb.	
1965:			1966		
January.....	5.08	4.39	January....	5.23	4.63
February....	4.98	4.33	February...	5.22	4.66
March.......	4.81	4.19	March......	5.26	4.67
April.......	4.65	4.01	April......	5.26	4.57
May.........	4.69	3.96	May........	5.26	4.49
June........	4.69	3.98	June.......	5.27	4.53
July........	4.90	4.26	July.......	5.65	5.03
August......	5.08	4.46	August.....	5.77	5.25
September...	5.16	4.67	September..	5.97	5.53
October.....	5.23	4.73	October....	6.09	5.57
November....	5.28	4.81	November...	6.05	5.53
December....	5.30	4.76	December...	6.02	5.43
Average...	5.03	4.40	Average..	5.63	5.00

[1] Markets under regulation during entire two-year period, 1965-66.

Class I Prices

The primary standard for establishing Class I prices under the Act is the concept of equating the supply with the demand for milk in the marketing area. The "price of feeds, the available supplies of feeds, and other economic conditions" referred to in the Act are taken into account as they affect prospective market supply and demand conditions. The "public interest" is served by an adequate supply of milk at a reasonable price.

The considerations involved in establishing Class I and other class prices, and the resulting effect upon uniform prices paid to producers, must be appraised in the light of the declared policy.

Formula pricing plans have been developed to establish and maintain Class I prices in accordance with these objectives. With rapidly changing price levels for other commodities and frequent shifts in supply and demand conditions in the market, some mechanism for achieving timely adjustments to changing market situations is necessary. Prices related to well-known measures of changing economic conditions in pricing formulas have proved helpful in achieving such adjustments.

Many factors affect the production and sale of milk in fluid markets. Many of these are not measurable directly, but some of the more important factors are reflected in price series or indexes which are published regularly by government agencies. Formula pricing has been developed on a local or regional basis for one market, or a group of closely related markets, to reflect the factors which are considered most important in the particular market or region and for which statistical measures can be obtained.

The Class I formulas in current use are of two general types. In most markets, so-called "manufacturing milk formulas" are used. Formulas of this type relate the price of Class I fluid milk to the value of milk used for manufacturing. Specified values are added to account for the additional cost of producing milk inspected for fluid use and the other special economic conditions which influence prices for milk in city markets. These added differentials are designed to balance the supply and demand for inspected milk in the regulated market.

In certain markets "economic formulas" relate fluid milk prices to selected economic factors. For example, in the New England markets, these factors relate the milk price to certain costs of production, to changes in per capita disposable income in New England, and to changes in the general level of wholesale prices of about 2,000 commodities.

Although formulas of these types are effective in bringing about many of the price changes needed in fluid milk markets, developments in milk production and market sales often require changes in the relationships between milk prices and the selected formula factors. An indicator which has helped to call attention to the need for such adjustments in pricing methods is the comparison of Class I sales with the total supply of producer milk available in a current period, as compared to some normal or standard relationship of Class I sales to supply.

In recent years, many of the Class I pricing formulas have been amended to incorporate such an indicator which operates automatically to reduce the Class I price when supplies are excessive, and to raise the Class I price when supplies are inadequate for market requirements. These automatic provisions have been termed "supply-demand adjustors."

In some regions where a single pattern of Class I prices appears to be appropriate, the Class I prices for a number of markets are calculated in terms of one supply-demand adjustor. The adjustment may be computed in terms of the combined receipts and Class I sales in all markets of the region, or in terms of the principal market whose price tends to dominate the region.

The level of Class I price in any market generally cannot exceed for any length of time the cost of buying the milk in another supply area and transporting it to the consuming market. If a price advantage exists long enough for handlers to recognize the advantages of another supply, they will change their buying arrangements. One of the most important guides to the proper level of Class I prices in any given market is this cost of alternative supplies.

Other Class Prices

All milk which must be derived from sources approved by appropriate health authorities is usually included in Class I. The skim milk and butterfat components of each class are accounted for separately. For example, fluid cream may be classed in Class I according to its product weight. The skim milk derived from the same hundredweight of milk is placed in Class I if it is disposed of in fluid sales, or in Class II if it is used for manufactured dairy products.

In establishing class prices for milk made into manufactured dairy products, the prices paid by unregulated handlers for milk used for such purposes are taken as a guide to the value of such milk in fluid markets.

The volume of the reserve and the organization of the market for disposing of this surplus milk varies considerably from market to market. For this reason, the level of prices which will contribute to orderly marketing in one area may be somewhat different from the prices needed in another.

Generally, however, the price is established at the level of competitive prices paid producers at unregulated manufacturing plants, unless there is a clear indication that such prices are not reasonable.

In determining the level of reserve milk prices which will produce orderly marketing, it is important that handlers in fluid milk markets should not be unduly encouraged to engage in manufacturing operations, either by establishing prices lower than the competitive price for manufacturing milk, or by making the handling of reserve supplies of milk within the fluid market appear more profitable than the handling of milk for fluid sales. On the other hand, prices cannot be set so high that handlers are unwilling to accept the excess milk from producers and process it into the manufactured products.

Reserve milk in Federal orders is priced by one of two general types of formulas: (1) formulas based on manufactured dairy product prices, or (2) formulas based on prices paid for milk by unregulated manufacturing plants. The two types of formulas differ only in mechanics, since each is designed to relate the order reserve milk price to the value of the milk for manufacturing purposes.

Producer Price Returns

Because different prices apply to milk disposed of in the several classes, a method of pooling, or distributing the total returns from sales of milk among producers at a uniform price, is used in conjunction with classified pricing. The Act provides for a choice of two methods of pooling returns to producers. One is the marketwide pool; the other is the individual-handler pool.

Under a "marketwide" pool, the total money value of all milk delivered by all producers to all handlers (pounds of milk in each class, multiplied by the minimum class prices and usually adjusted by butterfat and location differentials) is combined in one pool, and the pool is divided by the total amount of producer milk which is priced under the order. Then, all producers are paid the same "uniform" or blend price per hundredweight for their milk shipments. The uniform price also is adjusted for variations in the butterfat content of the individual producer's milk and other specified differentials.

In an "individual-handler" pool, the same computations are made in arriving at each handler's value of milk, and all producers supplying a particular handler are paid the same "uniform" or blend price per hundredweight (which also is adjusted for butterfat variations and other specified differentials). Under the latter type of pool, the proportion of milk used in the different classes varies

among handlers, and producers supplying one handler will receive a uniform price which differs from that paid producers supplying other handlers in the market.

Individual-handler type pools usually are found in markets which are relatively short of milk or where the reserve is distributed evenly among handlers. Where supplies are short, this type of pooling serves as a means of allocating the available supply among handlers in relation to their fluid sales. The handler with a higher proportion of Class I sales would pay a higher uniform or blend price. That would tend to attract producers from the handler who had a higher proportion of sales in the manufacturing value uses. Handler pools were used in eight of the 73 markets under regulation in 1966.

Marketwide pools, on the other hand, are best adapted to markets where reserve supplies are unevenly distributed among handlers. In many markets, particularly the larger ones, the reserve supply of milk can be more efficiently handled by consolidating the reserve supply in plants most distant from the market. Often, one reserve plant where milk products are manufactured much of the year will provide the necessary fluid milk for more than one handler in the short production months. This specialization of function would result in lower prices at such a plant under an individual handler pool than those paid by handlers who specialize in fluid sales. In a marketwide pool, all approved producers who supply the market regularly, even if only in the short supply period, are paid uniformly according to the total market utilization.

The Act provides that a cooperative association may blend proceeds of its sales in all markets:

> "8c (5) (F). Nothing contained in this subsection is intended or shall be construed to prevent a cooperative marketing association qualified under the provisions of sections 291 and 292 of this title, engaged in making collective sales or marketing of milk or its products for the producers thereof, from blending the net proceeds of all of its sales in all markets in all use classifications, and making distribution thereof to its producers in accordance with the contract between the association and its producers: Provided, That it shall not sell milk or its products to any handler for use or consumption in any market at prices less than the prices fixed pursuant to paragraph (A) of this subsection for such milk."

Producer Settlement Fund

Some handlers have mostly Class I milk. Other handlers may use a larger proportion of their receipts for manufacturing purposes. This results in wide variation among handlers in the average utilization value of their milk. Under a market pool, each handler is required to pay at least the uniform price to all producers from whom he purchases milk. The difference between what the handler pays producers and the utilization value of his milk is paid to or taken from a "Producer Settlement Fund." Handlers with higher than average utilization pay the difference

into this fund. This money is paid out to handlers with lower than average utilization. This results in a uniform price to producers.

Integration of Unpriced Milk Into the Classified Pricing System

In the early years of the order program, the orders provided for full regulation of all plants which distributed any milk in the marketing area. Full regulation permitted a plant and its producers to share in the proceeds of a fluid market, regardless of whether they had close and regular association with the market. By selling a token amount of milk in the marketing area, a plant could become a pool plant and share in the proceeds of the market, even though it took no responsibility in providing milk to the market when needed.

Unlimited participation in the marketwide pool permitted surpluses from other markets to be shifted to the regulated market. Such widespread distribution of pool funds to persons not regularly associated with the market kept returns from the fluid milk sales from serving their purpose of encouraging the production of a dependable supply of high quality milk. Thus, the effectiveness of a marketwide pool in providing orderly marketing and adequate milk supplies was being destroyed.

It became obvious that it would be necessary to establish performance requirements as a basis for sharing in the proceeds of a fluid market. Such pool plant requirements also could be used as a means of exempting from full regulation handlers having only limited distribution in the marketing area.

Concurrent with the setting of performance requirements which would permit some unpriced milk to enter a marketing area, was the need to devise a way to prevent this unpriced milk from entering the market at less than order prices. Obviously, it would be unrealistic to protect the Class I utilization of a market from demoralization from its own excess or reserve milk through a class price system, and at the same time, allow excess milk from another market to be sold without regulation. If milk from unregulated sources was available to some distributors at less than order Class I prices, those distributors who pay order Class I prices would be at a competitive disadvantage, and the purpose of the class pricing scheme would be thwarted. Such a situation would create the very disorder the milk order program was designed to eliminate.

Prior to the decision of the Supreme Court in 1962 in Lehigh vs. United States (370 U.S. 76) compensatory payment provisions were used to avert the market instability associated with unpriced milk within a regulated marketing area. The Court's decision nullified the payment provisions then in effect in the New York-New Jersey order and in some other orders. In 1964 new provisions were incorporated into most of the orders which provided for the orderly movement of unregulated milk into regulated markets. Also, at the same time the provisions which deal with the treatment of milk moving between Federal milk order markets were reviewed in light of the decision and were changed to some degree.

TABLE 3--Type of seasonal plan used in Federal milk orders, January 1, 1967

Marketing area	Type of pool		Type of seasonal incentive plan			Price based on	
	Individual handler	Market-wide	Base-excess	Louisville	Seasonal Cl. I differential	Mfg. milk value	Economic index
NEW ENGLAND							
Mass.-Rhode Island...		X		X	X		X
Connecticut.........		X		X	X		X
MIDDLE ATLANTIC							
New York-New Jersey		X			X		X
Delaware Valley......	X				X		X
SOUTH ATLANTIC							
Upper Chesapeake Bay		X	X		X		X
Washington, D. C.....		X	X		X		X
Wheeling............		X	X			X	
Clarksburg..........		X	X		X		
Tri-State...........		X		X		X	
Appalachian.........		X	X		X	X	
Tampa Bay...........		X				X	
Southeastern Florida.		X			X		
Upper Florida........		X			X		
EAST NORTH CENTRAL							
Upstate Michigan.....		X			X	X	
Southern Michigan....		X	X			X	
Northwestern Ohio....		X		X		X	
Columbus............		X		X		X	
Dayton-Springfield...		X		X		X	
Cincinnati..........		X		X		X	
Youngstown-Warren....		X			X	X	
Michigan Upper Peninsula.........	X				X	X	
Northeastern Wisconsin.........		X			X	X	
Milwaukee...........	X		X		X	X	
Rock River Valley....		X			X	X	
Northwestern Indiana...........		X			X	X	
Fort Wayne..........		X		X		X	
Louisville-Lex.-Evans		X		X		X	
Indianapolis.........		X		X		X	
Southern Illinois....		X		X	X	X	
Madison.............		X	X		X	X	
Central Illinois.....		X		X	X	X	
WEST NORTH CENTRAL							
Duluth-Superior......		X			X	X	
Minneapolis-St. Paul.		X			X	X	
Eastern South Dakota.		X	X			X	
Black Hills.........		X	X			X	
North Central Iowa...	X				X	X	
Cedar Rapids-Iowa City..............		X			X	X	
Quad Cities-Dubuque..		X			X	X	
Des Moines..........		X			X	X	

Continued

TABLE 3--Type of seasonal plan used in Federal milk orders, January 1, 1967

Marketing area	Type of pool		Type of seasonal incentive plan			Price based on	
	Individual handler	Market-wide	Base-excess	Louisville	Seasonal Cl. I differential	Mfg. milk value	Economic index
WEST NORTH CENTRAL--Con.							
Sioux City..........		X		X		X	
Nebraska-Western Iowa........		X		X		X	
St. Louis...........		X		X	X	X	
Ozarks..............		X		X	X	X	
Kansas City.........		X	X		X	X	
Neosho Valley.......		X			X	X	
Wichita.............		X		X		X	
EAST SOUTH CENTRAL							
Paducah.............		X		X	X	X	
Nashville...........		X	X		X	X	
Memphis.............	X				X	X	
Knoxville...........		X	X			X	
Chattanooga.........		X	X			X	
Mississippi.........		X	X			X	
WEST SOUTH CENTRAL							
Central Arkansas.....		X	X		X	X	
Fort Smith..........	X		X		X	X	
Oklahoma Metropolitan...............		X			X	X	
Red River Valley.....		X	X		X	X	
Texas Panhandle......		X	X		X	X	
Lubbock-Plainview....		X	X		X	X	
Northern Louisiana...		X	X			X	
New Orleans.........		X	X		X	X	
North Texas.........		X			X	X	
Central West Texas...		X			X	X	
Austin-Waco.........	X				X	X	
San Antonio.........		X			X	X	
Corpus Christi.......	X				X	X	
MOUNTAIN							
Eastern Colorado.....		X				X	
Great Basin.........		X				X	
Western Colorado.....		X				X	
Central Arizona......		X		X		X	
Rio Grande Valley....		X			X	X	
PACIFIC							
Puget Sound.........		X	X			X	
Inland Empire.......		X		X		X	

For milk distributed in a Federal milk marketing order area from unregulated plants three options are given to the handler: (1) Pay the dairy farmers delivering to him at the same rate he would be required to pay if he were a regulated handler. (2) Offset his in-area sales by Class I purchases from any Federal order. (3) Pay the difference between the Class I and blend prices of the order on his in-area sales.

Receipts of unpriced milk at pool plants are either assigned a surplus value or assigned pro-rata with priced milk. Surplus assignment is first given to receipts from producer-handlers operating in any Federal order, second to nonfluid products used for reconstitution of milk and, third to ungraded receipts. For any such receipts assigned to Class I, payments are charged at the difference between the Class I and surplus prices.

For moving milk from one regulated market to another regulated market, different rules apply.

Packaged milk may be moved between orders on route without any additional obligation, other than reporting to the market administrator. When packaged milk is received at one plant from a plant subject to another order, the milk is assigned to Class I at the receiving plant.

Bulk milk received in one regulated market from another may be assigned to the surplus class if both handlers agree. If both handlers do not agree on surplus classification a percentage of such receipts, equal to the higher of the market average surplus utilization or the receiving handler's surplus utilization, is allocated to the surplus class to the extent available at the receiving handler's plant, and then to Class I.

Allocation of Producer Milk to Classes

Whenever producer milk intermingles in the fluid sales business or in the plant operations with milk or dairy products from other sources, it is necessary to have some accounting rules for determining the use of producer milk versus such "other source" milk. Allocation for price determination cannot depend on the use of a specific lot of milk in a particular product because of the intermingling problem. The specific allocation procedure is set forth in each order.

The general formula for allocating producer milk to the highest-priced available uses has several variations. Each market order contains detailed instructions for the order of assignment of producer milk to class uses.

Seasonal Pricing Plans

Since the normal pattern of milk production results in a greater supply during the spring and early summer than during the remainder of the year, various plans of seasonal pricing have been used to encourage the production of milk in a more even monthly pattern. The incentive for a more uniform pattern of milk production is provided in Federal milk orders by seasonally variable

Class I prices, seasonal price adjustment funds, and base-excess plans. These seasonal pricing plans may be used singly or together.

The Class I pricing formula may provide a schedule of month-to-month price changes, ranging from a low in May or June to a high, usually in November.

Payments may be withheld from producers in the flush production season and such funds paid in the short supply season according to deliveries in that period. This system has been called the "Louisville plan."

A seasonal pricing plan which relates the payment more directly to the individual producer's seasonal pattern of deliveries is the base-excess plan. Under such a plan the producer establishes a base during the normally short production season, equal to the average daily quantity of milk he delivers. During the following flush production season he is then paid the base price for quantities of milk delivered, up to the amount of his base, and a lower price for any additional milk delivered. The total payments for base and excess milk equal the total payments which handlers are required to pay for the milk at the class prices.

Class I Base Plan

Title I of the Food and Agriculture Act of 1965 provides authority to include Class I base plans in Federal orders under which each producer would be given a part of the higher valued uses of milk. This authority expires December 31, 1969.

The adoption of a base plan is voluntary in each market and may be put into effect only with the approval of the Secretary after a public hearing and then approval by at least two-thirds of the producers. The legislation requires that a separate referendum be held on Class I base plans and bloc voting by cooperatives is not permitted. If a Class I base plan is not approved by producers it does not affect the status of the other provisions of an order.

The legislation provides that higher valued sales may be proportioned among base holding producers. Deliveries by a producer in excess of his base would be at the surplus milk price.

The legislation also provides for transfer of bases if approved by the Secretary and that any increase in Class I sales, or any bases forfeited are to be first made available to new producers and for relief of hardship cases. Other provisions include that payments received by a producer may be adjusted for milk sold outside the order and that the legal status of producer-handler remains the same as it was prior to the enactment of the base plan legislation.

First use of a Class I base plan is in the Puget Sound, Wash., Federal milk order market, where it took effect Sept. 1, 1967, after approval by 72 percent of the dairy farmers voting in a referendum.

Specific problems involved in establishing a Class I base plan in an order include: (1) the treatment of intermarket movements of milk, (2) application of the pricing standard as set forth in the basic legislation, (3) the length of the base period to be used, (4) the responsibility for reviewing and decisions concerning hardship cases, and (5) what action to take when producers deliver excess marketings outside the market.

Differentials

The actual class prices handlers pay and the prices producers receive are always adjusted by butterfat differentials and by location differentials. Butterfat differentials reflect the variations in the market value of milk containing different quantities of butterfat. Location differentials represent the cost of transporting milk from the production area to the consuming area.

Prices under the various Federal orders are determined and announced for a specified butterfat content of milk. The butterfat differentials are quoted in terms of cents per 100 pounds, and apply to each "point" (one-tenth of one percentage point) variation from the basic test at which prices are announced.

In some of the larger milk markets, the milk supply is assembled in a system of so-called country plants which are located in the area of production at varying distances from the processing distributing plants. The milk is cooled at these country plants and then transported in tank cars or tank trucks to the city processing plants. Some processing and distributing plants are also located in the production area at considerable distance from the principal center of consumption.

The minimum prices established by Federal milk orders are normally applicable at the plant at which milk is first received. The pricing plans provide for zone differentials by which the market price is adjusted to determine a zone price for each plant. The charge for hauling milk from the farm to the first plant at which it is received is negotiated between the dairyman and the hauler, who is sometimes also the milk handler.

The system of location differentials, and the pricing point with relation to the assembly of milk from farm bulk tanks, have been studied by producers and handlers in many markets. As this change in marketing has developed, some changes have been made in the location pricing plans. A more detailed discussion of this new development may be found on pages 39-42.

ADMINISTRATION OF FEDERAL MILK ORDERS

The administrative functions are carried out in the milk order program by the Dairy Division (responsible for program development and supervision of local administration), and the market administrators (each responsible for carrying out the terms of a specific order).

Dairy Division Operations

Specific duties and responsibilities of the Dairy Division are delegated to the Director by the Administrator of the Consumer and Marketing Service. The Director has final authority under delegation to take all action necessary or appropriate in the administration of marketing orders, relating to the handling of milk and its products, approved by the Secretary in accordance with the provisions of the

Agricultural Marketing Agreement Act of 1937. Such action includes, but is not limited to, the following:

(a) To supervise the operations and activities of any market administrator, committee member, or other agent or employee of any agency established under a marketing agreement or marketing order, and to require such agents or agencies to submit, from time to time, such reports or other data as the Director determines to be necessary or appropriate.

(b) To direct such agents or agencies to take any action not inconsistent with the provisions of such marketing agreements or marketing orders, as the Director determines to be necessary or appropriate to accomplish the purposes and to secure the lawful and successful administration of any such marketing agreement or marketing order.

(c) To exchange information with State officials pursuant to memoranda of understanding between the Secretary of Agriculture and State officials.

(d) To exercise the following powers of the Secretary under Section 8d of the Agricultural Marketing Agreement Act of 1937:

(1) To find and determine what information is necessary to be furnished by handlers subject to regulatory orders to enable the Secretary to ascertain and determine the extent to which such regulatory orders have been carried out or have accomplished the declared policy of said act;

(2) To prescribe the forms of reports on which such information shall be furnished;

(3) To request handlers subject to regulatory orders to furnish the information determined to be necessary under (a) hereof; and

(4) To authorize and to direct other agents and employees of the Department of Agriculture to examine such books, papers, records, copies of income tax reports, accounts, correspondence, contracts, documents, or memoranda as he deems relevant and which are within the control of any such party to such marketing agreement, or any such handler, from whom such report was requested, or of any person having, either directly or indirectly, actual or legal control of or over such party or such handler, or of any subsidiary of any such party, handler, or person.

The supervision of market administrators' operations and activities is carried out in the Dairy Division by formal instructions, and through close working relationships with each administrator's office through the Order Operation Branch, the Order Enforcement Branch, the Program Analysis Branch, and the Cooperative Qualification Branch.

The Director of the Dairy Division has issued an instruction manual covering various aspects of the administration of milk orders. In addition to the formal instructions, market administrators are required to report from time to time on special phases of their activities, such as auditing techniques or methods of testing the accuracy of weights and butterfat tests, so that the Dairy Division can review and evaluate the standard of performance of the various phases of the administrative work in the different offices.

The expenditure of funds by market administrators, both for administrative purposes and for marketing services to producers, like other operations of the market administrators' offices, are supervised by the Dairy Division. Market administrators are required to submit estimates of income and expenditures in specified accounts for each calendar year to the Dairy Division for approval prior to the beginning of the year to which the estimates apply. Assessment rates are adjusted whenever funds are accumulated in excess of a predetermined limit based on the period calculated to be necessary to liquidate an order operation in the event of termination.

USDA's Office of the Inspector General audits the records of market administrators' use of administrative and marketing service funds to determine if they have been used in accordance with instructions of the Dairy Division.

The Civil Service Commission has ruled that market administrators and their employees are Federal employees and as such are subject to the Civil Service Act. The employees on the staffs of market administrators are classified as "Schedule A Federal Employees" under a ruling of the Civil Service Commission. When a position is covered by Schedule A, it may be filled without regard to Civil Service competitive registers. This means that the agency may recruit direct for the position, instead of obtaining a certificate of eligibles from the Civil Service Commission. However, in such instances, the agency must develop qualification standards for each job established and must conform with the regulations of the Civil Service Commission and of USDA with respect to appointments, promotions, reassignments, changes to lower grade, reduction in force, and separations for cause. The Executive order governing fair employment practices within a Federal establishment apply to Schedule A employees as well as other Federal employees. Provisions of the Veterans' Preference Act must be followed. Loyalty forms, application forms, oath of office, etc., must be obtained from new appointees, and personnel actions and reports prepared in strict compliance with Civil Service manuals and Departmental regulations.

The Dairy Division has developed and issued a salary and wage plan for milk market administrators and their employees. In that plan, twenty-five grades are established, designating the base salary associated with each grade, the total range of salary, the size of each step, the number of steps within each grade, the frequency of changes or ingrade pay increases, the years to cover the entire range within each grade, and the minimum length of service before being eligible for promotion to the next grade. A market administrator may not pay any employee more than is authorized by this wage and salary plan, or adjust an employee's pay at a faster rate.

The responsibility for recommending the terms and provisions of milk orders and describing their intent and purposes is delegated to the Dairy Division under the departmental organization and assignment of functions. The Division also makes the initial interpretations of the provisions of orders in the process of order administration, whereas the more formal procedures of review operate through other channels. The application of order provisions

by market administrators which are referred to the Dairy Division for review are usually subjects on which the market administrator and the handler or handlers affected by a ruling disagree, or which may lead to controversy. As a matter of practical operating procedure, the market administrator applies order provisions on the basis of his understanding of what was intended by the Secretary, unless the application is questioned. When the market administrator or any other person has any question concerning the application of a specific order provision, he may request a ruling from the Dairy Division.

Market Administrator Operations

Each milk order is administered in the local area by an agency directed by a market administrator who is appointed by the Secretary of Agriculture. The powers and duties of the market administrator are prescribed in each order.

In general, the powers of a market administrator include the establishment of rules and regulations to carry out the terms and provisions of the order. These include, among other things, receiving, investigating, and reporting to the Secretary, complaints of any violations of the terms and provisions of the order.

The duties performed by a market administrator include those necessary in administering the terms and provisions of the respective order. These include a monthly computation and public announcement of class and uniform blend prices and associated butterfat differentials. The administrator verifies each handler's reports and payments by inspection of such handler's records or of any person upon whose utilization the classification of skim milk or butterfat depends. The market administrator prepares and disseminates to the public such statistics and information concerning operations under the order, and keeps such records and books as will clearly reflect the transactions provided for in the order.

The administrator employs a staff to assist him in administering the order. The expense of maintaining such a staff is provided for by an administrative fund and a marketing service fund which are prescribed in each order. The expense of administration is prorated among handlers operating in the market. The marketing service fund covers the expense of providing market information and for the verification of weights, sampling, and testing of milk received from producers who are not members of qualified cooperatives. The cost of these services is borne by such producers.

The market administrator must make day-to-day decisions regarding the application of the order provisions to a specific set of circumstances. Although the market administrator's duties do not include the issuance of official interpretations of a milk order (in the sense that he has final authority to bind the Secretary by his interpretation of the order's terms and provisions), the administrative functions which he must perform require his continuous application of order provisions to specific situations. The market administrator can ordinarily carry out the administrative function by a mere reading of the order without any question of the

provision's meaning. It is impossible, of course, to avoid all disputes with respect to the meaning of words and phrases. In actual practice, the market administrator may have to indicate, in a specific situation, his idea of the meaning of the order's terms in order to proceed with the other directives.

One of the most important functions of the market administrator's office is the examination of books and records maintained by handlers to determine whether payments are made according to the terms of the milk order. He contacts handlers in the area and supplies them with the necessary forms on which to report their receipts and disposition of milk and payment to producers. Since the administrative duties of the market administrator are largely the verification of the payment of required amounts by handlers, a large proportion of the staff which he employs is engaged in auditing handlers' books and records. Although the staff employed on specific duties varies from market to market, auditors make up 30 to 50 percent of all employees in most markets.

The audit program for verification of payments for milk combines a check of physical units and financial transactions. The comparison of intake and output of physical units and the customary balance of financial receipts and expenditures complement each other in the audit system. The emphasis attached to one method or the other varies with the type of handling operation to be verified.

The auditor verifies by making comparisons of goods handled and financial records. He checks the payments made to producers, to other handlers, and to suppliers of various ingredients which may be mixed with dairy products or intermingled in the sales operations. He tests the records of sales to support the claimed disposition. Besides an investigation of the specific accounts which deal with purchases and sales that have a direct relation to milk handling operations, the complete audit includes an examination of other financial accounts to determine whether any account, not labeled "milk", may have actually been used to record milk purchases or sales.

The complete financial check is usually interspersed with the audit of production records. In the audit program it is customary to rely also on a physical check of the handlers' product operations as a means of verifying the total plant receipts and output. In this check of physical units, the receipts of milk are checked through the plant's production operations and balanced with the total recorded disposition.

The extent and type of the audit is adapted to the market and the handler in accordance with the terms of the orders and the records customarily kept. The Dairy Division reviews the auditing procedures from time to time to assure that adequate verification is accomplished without unnecessary expense.

Current Developments Affecting Milk Orders

In the foregoing pages, Federal milk orders have been described in terms of past and present practices. As milk markets and marketing conditions have changed, the orders have been revised. The procedures under which milk orders are developed are such that the impact of new marketing methods or other developments

in the market can be publicly appraised. Public discussion and the exchange of views regarding marketing problems and their relation to the order program contribute to the solution of such problems. The complete and accurate information about supplies and sales of milk which is available in Federal order markets furnishes the material for better marketing decisions. With public forum and the confidence engendered by complete market information, producers and handlers, in cooperation with Government representatives and specialists from State departments of agriculture and land grant colleges and universities, are able to devise and put into effect improved systems of market pricing.

New Marketing Methods

Probably the most significant development in milk marketing in recent years is the farm bulk tank. These tanks are replacements for the 10-gallon can, long used in the handling of milk on the farm and in shipping the milk from the farm to a dairy plant. The bulk tank, which may hold as little as 100 gallons or more than 1,000 gallons of milk, has replaced cans on the farm. Milk held in the farm bulk tank is pumped into tank trucks which are used to haul the milk to dairy plants. In January 1966, nearly 87 percent of all the milk delivered to 72 Federal order markets was received from farm bulk tanks. In 28 of these markets, all the milk was received from bulk tanks. In 43 of the other markets, 85 percent or more of the total receipts was from bulk tanks.

There are several important features of the farm bulk tank. Tanks make it easier to handle milk on the farm, especially when combined with pipeline milking. A second advantage is that the milk is cooled much more rapidly and to lower temperatures, thereby greatly increasing its keeping qualities. A third characteristic is that the milk is picked up in tank trucks and can be hauled greater distances and somewhat more cheaply. In most areas, bulk milk is picked up from the farm every other day and is delivered directly from the farm to plants.

One of the principal effects to date of the switch to farm bulk tanks is that a great many receiving stations have closed. The receiving stations were milk plants at which milk in cans was received from the farm, weighed, tested for butterfat, cooled, and combined into bulk tank lots for more economical shipment to city plants. Some of the receiving stations were also equipped to manufacture the milk not called for by the city plants. The farm bulk tank has eliminated the need for the receiving station in many markets. The milk needed by the bottling plants comes directly from farms to the city plants, and only the milk not needed for bottling is sent to country plants for manufacture. This is the case particularly in smaller markets. Receiving stations still operate to some extent in larger markets where milk supply areas spread out over large distances.

In several instances, the definition of a pool plant, as it relates to country plant functions, has been changed to recognize a different function of country plants.

Country plants are normally identified with a particular market because they are used to collect milk which is shipped to distributing

plants in the sales area. With many shipments now made direct from farm to city distributing plants, the country plant receives milk only when it must be used in manufactured products.

The assembly of milk from farms in bulk tanks has made it possible for producer cooperatives which do not operate plants to function as handlers, in that they direct milk to the fluid market as it is needed and divert it directly from the farm to manufacturing outlets when necessary. This new function of cooperatives has increased their services and responsibilities in the marketing system.

In the New York-New Jersey market, extensive changes in the procedures for accounting, pooling and pricing bulk tank milk were adopted in order amendments effective December 1, 1961.

Specifically, the amendments call for:

1. Identifying bulk tank milk for purposes of accounting and pooling as milk coming from "units" or groups of farms, rather than as "milk received at a plant."
2. Making the farm the point of receipt by the handler for bulk tank milk picked up at the farm, rather than at the plant or plants to which it later is moved.
3. Establishing minimum class prices charged to handlers for bulk tank milk on a f.o.b. farm basis, with farms zoned by townships, and prices adjusted by the same transportation differentials that now apply to milk received at pool plants in the same zone.
4. Adjusting minimum blend prices directly to producers of bulk tank milk by zone transportation differentials, reflecting locations of individual farms.

Changes are occurring in other areas of the marketing system. For example, the wider sales radius made possible by the increased use of the paper package, the economy in large scale processing plants, and the trend toward specialized packaging in some plants are developments which have changed milk markets.

One aspect of the larger sales territory is that some decision has to be made as to where a handler will be regulated if his sales extend into two or more regulated markets. The orders generally provide that such a handler be regulated in the market where he has the greatest Class I sales. This provision has been satisfactory in most of the markets where it has been used, but has been modified in cases where a plant's sales were about evenly divided between two markets.

With milk moving more freely between markets, it has become increasingly necessary to improve alignment of prices among markets. A program to accomplish better alignment was started in 1961 with the publication of a new milk price series which gave promise of suitable use in all markets. The price series known as the Minnesota-Wisconsin milk price reflects the prices paid for manufacturing grade milk in those two States where half the manufacturing grade milk in the United States is produced.

This new price series was developed as a more comprehensive measure of manufacturing milk values, and by January 1, 1967, it was used to compute Class I prices in 66 Federal order markets. Its adoption in these many markets has done much to eliminate

price differences due to varying measures previously used to determine manufacturing milk values.

In some cases, Class I prices for a number of markets have been aligned by using a single supply-demand adjustor, based either on data for the major market or for the combined markets. For example, Class I prices in some Federal order markets in Texas vary according to a supply-demand factor calculated on the basis of receipts and sales in five markets combined.

Growth of Interest in Federal Orders

With the expansion of the program, milk marketing problems have been studied on a national as well as local and regional basis. In recent years, several comprehensive studies made by interested groups have contributed greatly to the understanding and direction of the program.

A comprehensive appraisal of the Federal order program was undertaken at USDA's request by a group of men who were intimately familiar with the practical problems of dairy marketing and the responsibilities to the public of a regulatory program of this type. This group of specialists from nongovernmental fields reported on their study in October 1954. The report commended and endorsed the administration of the program. This group found the program had adapted itself successfully to a variety of economic conditions in the past and predicted that Federal orders would continue to serve their useful purpose in the future. They called attention to the effectiveness of the public hearing in eliminating suspicion and misunderstanding regarding the fluid milk business.

The most recent study was conducted by a national committee appointed in March 1961 by the Secretary of Agriculture to analyze conditions affecting operations of the Federal milk marketing order program and make recommendations with respect to them. The committee found that, in general, the program had accomplished its basic objective of bringing about stability and orderly marketing. The committee made a number of recommendations with respect to areas in which certain modification was needed.

Besides these and other formal studies which have been made of Federal milk marketing orders, the program is continuously being reappraised by groups and individuals with the results of such studies usually reported at public hearings. Representatives of producers and handlers directly affected by milk orders watch the proposals made in each area and keep USDA well acquainted with the possible implication of all proposals. The attention directed toward new and old ideas in the program by such people who are keenly interested in it precludes any serious omissions in the government review of these matters.

TABLE 4.--Measures of growth in Federal milk order markets, 1947-66

Year	Number of markets[1]	Number of handlers[1]	Number of producers[2]	Producer deliveries	Producer deliveries used in Class I	Percentage of producer deliveries used in Class I	Prices at 3.5 percent butterfat content[3]		Receipts as percentage of milk sold to plants and dealers	Daily deliveries per producer	Gross value per producer at blend prices adjusted for butterfat content
							Class I	Blend			
		Number		1,000 lb.		Percent	Dol. per 100 lb.		Percent	Pounds	Dollars
1947	29	991	135,830	14,980,301	9,808,182	65.5	4.65	4.34	21.2	301	5,064
1948	30	963	136,363	15,019,637	9,852,103	65.6	5.29	4.97	21.8	301	5,713
1949	33	966	142,995	17,049,170	10,104,365	59.3	4.67	4.03	23.3	328	5,042
1950	39	1,101	156,584	18,659,790	10,999,842	58.9	4.51	3.93	25.1	336	5,050
1951	44	1,343	172,327	20,116,620	12,717,798	63.2	5.13	4.59	27.0	344	5,994
1952	49	1,352	176,752	22,998,107	14,671,764	63.8	5.37	4.85	29.8	360	6,663
1953	49	1,308	183,479	25,895,718	15,435,739	59.6	4.91	4.31	30.6	387	6,372
1954	53	1,333	186,127	27,140,234	16,172,041	59.6	4.62	4.01	30.9	403	6,151
1955	63	1,483	188,611	28,948,067	18,031,855	62.3	4.67	4.08	31.8	430	6,598
1956	68	1,486	183,830	31,379,533	19,615,443	62.5	4.90	4.24	32.9	469	7,445
1957	68	1,889	182,551	33,455,338	21,338,699	63.8	4.87	4.51	34.0	508	8,147
1958	74	1,962	186,155	36,355,658	23,308,694	64.1	4.72	4.40	36.5	547	8,500
1959	77	2,197	187,576	40,149,083	26,250,349	65.4	4.79	4.43	39.8	601	9,466
1960	80	2,259	189,816	44,812,259	28,757,758	64.2	4.88	4.47	43.1	648	10,482
1961	81	2,314	192,947	48,802,558	29,858,848	61.2	4.91	4.45	45.0	704	11,131
1962	83	2,258	186,468	51,648,245	31,605,983	61.2	4.80	4.14	46.7	761	11,854
1963	82	2,144	176,477	52,860,091	32,963,588	62.4	4.78	4.15	47.5	821	12,814
1964	77	2,010	167,503	54,447,471	33,965,406	62.4	4.87	4.23	47.7	888	14,174
1965	73	1,891	158,077	54,443,675	34,561,295	63.5	4.93	4.31	48.3	944	15,300
1966[4]	71	1,732	146,090	53,102,564	34,870,353	65.7	5.56	4.95	48.3	996	18,514

[1] End of year. (Date on which pricing provisions became effective)
[2] Average for year.
[3] Prices are simple averages for 1947-61 and weighted averages for 1962-66.
[4] Preliminary.

INFORMATION NEEDED

The following text outlines broadly the information needed by the U.S. Department of Agriculture for consideration of a proposed Federal milk marketing order:

I. Need for regulation.
   A. Marketing problems.
      1. Availability of information about market conditions.
      2. Kinds of pricing plans used in the market and their effectiveness in promoting market stability.
      3. Distribution of surplus among producer groups.
      4. Source of market supplies and circumstances requiring use of milk from outside sources.
      5. Existence of displaced producers or milk without a market outlet.
   B. Price problems.
      1. Level of prices in relation to other markets.
      2. Adequacy and dependability of local supplies as influenced by prices.
      3. Disparity of prices among producers in the market.
   C. Bargaining problems.
      1. The degree of confidence in the bargaining system.
      2. Ability of cooperative associations to bargain effectively with all or certain handlers.

II. Interstate Commerce.
   A. Description of sources of current and potential supplies by States.
   B. Description of distribution of milk and milk products with reference to State boundaries.
   C. General relationship of prices of milk in marketing area to prices and movements of milk and dairy products in interstate commerce.

III. Marketing background.
   A. Names and addresses of handlers.
   B. Description of location and operation of plants which would be subject to regulation and which distribute milk or milk products in the area.
   C. Description of location and operation of plants which distribute milk or manufactured milk products in the area surrounding the proposed marketing area.
   D. Names and addresses of cooperatives.
      1. Description of operation.
      2. Copies of contracts with producer members and with handlers.
      3. Proportion of milk in the market under contract.
   E. Regulation by State agencies.
      1. Copies of laws and regulations.
      2. Activities in fixing producer and/or resale prices.

IV. Marketing area.
   A. Character of marketing area.
      1. Location of urban centers.
      2. Population of marketing area by political subdivisions.

B. Competition among handlers in marketing area.
   1. Number of handlers.
   2. Size and kinds of operations of handlers.
   3. Extent to which same handlers meet in direct competition in marketing area.
      a. Numbers of handlers selling at retail and wholesale in each town in the marketing area.
      b. Names of towns in which handlers with most extensive routes operate.
      c. Proportion of each handler's total fluid sales made in each town in the marketing area and percentage of total sales in that town or county made by each handler.

C. Homogeneity of milk quality.
   1. Copies of health ordinances.
   2. Degree to which milk may be distributed freely throughout marketing area.

V. Classification system.
   A. Description of classification systems in effect in marketing area.
   B. Effect of health requirements on classification.
      1. Products which must be made from locally inspected milk.
      2. Products which, under limited conditions, may be made from other than locally inspected milk (specify conditions).
      3. Products which may be made from uninspected milk.
      4. Standardization or modification of milk.
         a. With cream.
         b. With skim milk.
         c. With condensed or dried products.
         d. Lowest test of whole milk sold.
      5. Standardization or modification of cream.
         a. Lowest percent butterfat in cream sold.
         b. Use of condensed or dried products for standardizing cream.
         c. Are mixtures of milk and cream sold?
      6. Butterfat test of milk, cream and other fluid products sold.
   C. Effect of transportation systems on classification.
      1. Extent of deliveries of milk to city distributing plants.
      2. Processing of milk products at country plants.
      3. Transportation savings on processing at country plants.
   D. Sources and prices of substitutes for products made from local milk.
   E. Kinds and availability of surplus processing facilities.
   F. History of milk utilization in the marketing area.

VI. Level of prices. (Price material should be furnished to the extent available by months or pay periods for period up to three years before the hearing).
   A. Price history.
      1. Class prices.
      2. Producer prices.

3. Butterfat differentials.
4. Location differentials.
5. Retail prices.
6. Prices in alternative market outlets.
7. Prices paid producers in alternative supply areas.
8. Prices paid for emergency or supplemental supplies of milk.
9. Prices paid by handlers for dairy products purchased.

B. Supply conditions.
1. Description of supply area.
   a. Map of supply area (show plants proposed to be regulated and other plants).
   b. Quantities of milk and numbers of producers supplying market by county or other geographic division.
2. Quantities of supply by month.
   a. From producers.
   b. From other sources (location of such sources).
3. Cost of meeting sanitary and other special requirements of fluid milk markets.
4. Prices of major cost items such as labor and feed.
5. Description of important alternative farm enterprises.
6. Quality factors.
   a. Butterfat tests of producer receipts.
   b. Grade A premiums.

C. Demand conditions.
1. Sales of whole milk and other fluid products by months.
2. Indices of consumer purchasing power and business activity in the marketing area.
3. Population growth as indicated by school enrollment or other local measure.
4. Alternative markets for producer milk.
   a. Other fluid milk markets.
   b. Manufacturing outlets.

VII. Pooling.

A. Methods of pooling in effect in the market.
1. Dealer pools.
2. Cooperative pools.
3. Pools administered by State regulatory agencies.

B. Price disparities among producers.

C. Distribution of surplus among handlers.

D. Distribution of surplus handling facilities among handlers.

E. Types of pools in markets obtaining milk from the same supply area.

F. Relationship of additional sources of supply to types of pool.
1. Potential additional sources of milk.
2. Quality of additional sources of milk.
3. Intermittent suppliers in relation to sharing in pool returns.

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VIII. Other problems. Each market has its peculiar problems. Information on these problems must be developed in addition to that outlined above. The types of information which would be helpful in dealing with particular problems can be indicated if an explanation of the problem is furnished to the Dairy Division.

Each provision in the proposed order must be justified by evidence in the hearing record. Exhibits are most helpful. In preparing exhibits, four copies are required for the record. Additional copies are normally furnished to other parties interested in the hearing. Price material and other relevant statistics should be furnished to the extent available, by months or pay periods, for a minimum of three years preceding the hearing.

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